

Before the
Administrative Hearing Commission
State of Missouri



DEPARTMENT OF HEALTH AND)	
SENIOR SERVICES,)	
)	
Petitioner,)	
)	
vs.)	No. 12-0576 DH
)	
LINDA DAVIS d/b/a GRASSROOTS)	
PRESCHOOL AND DAYCARE,)	
)	
Respondent.)	

DECISION

The Missouri Department of Health and Senior Services, Bureau of Child Care (the “Department”) has grounds to discipline the child care center license of Linda Davis for failure to supervise a child under her care.

Procedure

On April 16, 2012, the Department filed a complaint seeking to discipline Davis. On April 17, 2012, we served Davis with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. We held a hearing on the complaint on October 23, 2012. Brett Cavender represented the Department, and Davis represented herself.

The matter became ready for our decision on January 15, 2013, the date the last brief was filed.

Findings of Fact

1. On April 1, 2010, Davis, d/b/a Grassroots Preschool and Daycare (“Grassroots”), was licensed by the Department to operate a child care center at 8410 North Broadway, St. Louis, Missouri. Her license was active at all relevant times, and expired on March 31, 2012.

2. On January 9, 2012, at 6:10 a.m., a four-year-old child, Child A¹, was dropped off at Grassroots by the child’s mother. The child’s mother then walked to her place of employment at Baden Christian Child Care, 8375 North Broadway, about two blocks away, arriving at about 6:13 a.m.

3. Upon Child A’s arrival at Grassroots, he was greeted by Davis’ husband, who took Child A to Davis. At the time, Davis was in the kitchen of the child care home preparing breakfast for the center’s children. Child A was crying, asking for his mother, and would not take off his coat.

4. Davis put Child A outside of the half door leading into the kitchen, and returned to the kitchen to remove a tray from the oven.

5. Moments later, without Davis’ noticing, Child A walked out of Grassroots, crossed North Broadway, and walked alone to his mother’s place of employment at 8375 North Broadway, a distance of approximately .06 miles.

6. North Broadway is a four-lane road, with a speed limit of 35 mph. There is no stop light in front of Grassroots.

7. At the time Child A left Grassroots, it was still dark outside.

8. Davis was unaware of the whereabouts of Child A from about 6:15 a.m. to 6:30 a.m. on January 9, 2012.

¹ Although the name of the child was used in the hearing, the Department’s complaint and the parties’ post-hearing briefs refer to the child as “Child A.” We continue that reference for purposes of this decision.

9. At approximately 6:30 a.m., Child A's mother notified Davis by telephone that Child A was with her at 8375 North Broadway. An employee of Baden Christian Child Care returned Child A to Grassroots at approximately 6:40 a.m.

10. The Department's Section for Child Care Regulation ("SCCR") received a complaint on January 9, 2012, alleging that an unattended child (Child A) left Davis' child care home that morning, crossed North Broadway, and walked to 8375 N. Broadway to his mother's place of employment.

11. On January 10, 2012, the Department's Child Care Facility Specialist, Debbie Ashlock, conducted an on-site investigation of the complaint. She interviewed Child A, both of the child's parents, and Davis.

12. Based on Ashlock's investigation report, on January 10, 2012, the Department notified Davis by hand-delivered letter of its decision to revoke Davis' child care home license. That day, Davis requested a hearing before this Commission under § 210.245.2² to appeal SCCR's decisions to immediately suspend and revoke her child care license.

13. On January 23, 2012, Ashlock notified Davis by letter that the allegations in the complaint received by the SCCR on January 9 had been substantiated. In the letter, Ashlock provided Davis a copy of the SCCR's "Substantiated Complaint of Statute or Rule Violations," and Ashlock's investigation report.

14. On January 26, 2012, the Department conducted a hearing before a hearing officer on the immediate suspension of Davis' child care license.³ On February 23, 2012, the hearing

²Statutory references are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

³ Although it was not made a part of our record, the Department indicated Davis was served with notice of its decision to seek immediate suspension of her license pursuant to § 210.245.4. Davis does not complain of lack of notice of the January 26, 2012 proceedings, and participated without counsel.

officer issued a Decision and Order with findings of fact and conclusions of law which determined the Department's immediate suspension of Davis' license was appropriate.

Conclusions of Law

The Department filed its complaint with this Commission pursuant to § 210.245.2, which states:

If the department of health and senior services proposes to deny, suspend, place on probation or revoke a license, the department of health and senior services shall serve upon the applicant or licensee written notice of the proposed action to be taken. The notice shall contain a statement of the type of action proposed, the basis for it, the date the action will become effective, and a statement that the applicant or licensee shall have thirty days to request in writing a hearing before the administrative hearing commission and that such request shall be made to the department of health and senior services. If no written request for a hearing is received by the department of health and senior services within thirty days of the delivery or mailing by certified mail of the notice to the applicant or licensee, the proposed discipline shall take effect on the thirty-first day after such delivery or mailing of the notice to the applicant or licensee. If the applicant or licensee makes written request for a hearing, the department of health and senior services shall file a complaint with the administrative hearing commission within ninety days of receipt of the request for a hearing.

This statute gives us jurisdiction to hear this case. The Department has the burden of proof by a preponderance of the evidence.⁴

Pursuant to § 210.221.1.(2),⁵ the Department has the power and duty to suspend, place on probation, or revoke the license of a person who violates §§ 210.201 to 210.245, or the rules and regulations promulgated thereunder. The Department seeks revocation of Davis' license for violation of 19 CSR 30-62.182(1)(A).1 and .3:

- (1) Care of the Child.
- (A) General Requirements.
- 1. Caregivers shall not leave any child without competent adult supervision.

⁴*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁵RSMo 2000.

* * *

3. Caregivers shall provide frequent, direct contact so children are not left unobserved on the premises.

The regulation is authorized by § 210.221. 19 CSR 30-62.182.

Davis does not deny that, while her attention was briefly diverted and without her knowledge, a four-year old child in her care left her facility, crossed a four-lane street, and walked unattended to his mother's place of employment shortly after 6:10 on the morning of January 9, 2012. Davis left the child without competent adult supervision, even if only momentarily, and in so doing, violated subsection (1) of the regulation. Further, because the child's departure went unobserved and unnoticed by Davis for several minutes, we also find she failed to provide to the child the "frequent, direct contact" required under subsection .3.

Because Davis violated 19 CSR 30-62(1)(A).1 and .3, regulations promulgated by the Department, her license is subject to discipline under § 210.221.1(2).

Summary

There is cause for revocation of Davis' child care center license under § 210.221.1(2).

SO ORDERED on May 13, 2013.

/s/ Mary E. Nelson
MARY E. NELSON
Commissioner